APPENDIX A — OPINION AND JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT DATED MARCH 25, 1999, ENTERED AND FILED MARCH 26, 1999

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 98-4080

D.C. Docket No. 95-0037-CIV-DLG

BARRY T. SULLIVAN,

Plaintiff-Appellee,

versus

NATIONAL RAILROAD PASSENGER CORPORATION, a foreign corporation,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida

(March 25, 1999)

Before COX and BARKETT, Circuit Judges, and FAY, Senior Circuit Judge.

BARKETT, Circuit Judge:

National Railroad Passenger Corporation ("Amtrak") appeals a final judgment following a jury verdict in favor of

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Barry T. Sullivan on his claim of unlawful retaliation under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e) *et. seq.* ("Title VII"), the Civil Rights Act of 1991, 42 U.S.C. § 1981(a) and the Florida Whistleblower's Protection Act, Fla. Stat. Ann. § 448.102(3) (West 1998). Amtrak argues that the district court should have granted its motion for judgment as a matter of law or, in the alternative, for a new trial. We reverse.

Background

In 1995, Barry Sullivan sued Amtrak, claiming that he was the victim of sexual harassment and retaliation stemming from an incident in December 1993 when Sullivan's immediate supervisor, Kevin Scott, allegedly sexually propositioned him in a hotel parking garage. Sullivan claims that the incident occurred while the two were traveling on business and staying at a hotel in Tampa, Florida. According to Sullivan, when Sullivan accompanied Scott to the hotel parking garage to retrieve Scott's briefcase from the car, Scott suggested that Sullivan accompany him to Scott's room for a short while, and that Sullivan would not regret it. Sullivan claimed he slammed Scott to the trunk of the car, causing Scott to lose his glasses. As Scott retrieved his glasses from the ground, he apologized profusely to Sullivan, asking him to forget about the incident and assuring him that it would not happen again. According to Sullivan, Scott further assured him that he would have nothing to worry about for as long as the two continued to work together. Sullivan did not report this incident to anyone at Amtrak until February 1994, after he had been demoted from his job as manager.

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Sullivan's demotion occurred on January 26, 1994, when Scott hand-delivered a letter to Sullivan informing him that his management job as District Manager of the Miami Station had been eliminated as part of Amtrak's nationwide reorganization. This led to Sullivan's taking the non-managerial position of Yard Chief of the Miami Station. On February 11, 1994, Amtrak began an investigation into the whereabouts of fifteen missing Publix gift certificates as well as a cellular phone that had been in Sullivan's care. Shortly thereafter, Sullivan returned eight of the gift certificates and the phone. He could not account for the missing eight certificates, which were cashed at a grocery store near his home. He also admitted to making, along with his wife, over one thousand dollars worth of unauthorized calls on the company phone. Amtrak took no formal action against Sullivan regarding either the phone or the gift certificates.

On approximately February 15, 1994, Sullivan's attorney lodged a complaint with Amtrak on Sullivan's behalf, claiming that the incident with Scott in December 1993 constituted sexual harassment. Amtrak officials investigated the complaint and concluded that the incident had not in fact occurred. In June 1994, Sullivan's work schedule was changed from four to five days a week. Amtrak claims that this change was necessary to satisfy a Food and Drug Administration (FDA) regulation that all inbound trains be inspected and cleaned upon arrival. In July 1994, Amtrak eliminated all Yard Chief positions nationwide. Sullivan then took the lesser position of Chief of On Board Service. Throughout 1995, Sullivan unsuccessfully applied for a number of different management positions including: Director of OBS Station Support (January 1995); Product

Line Director (March 1995); Manager of Terminal Services, Miami (March 1995); Manager of Terminal Services, New Orleans (May 1995); Conventional Services Manager, Northeast Corridor (April 1995).

Sullivan filed suit against Amtrak in February 1995, claiming that the incident with Scott in December 1994 constituted sexual harassment. Sullivan amended his complaint in June 1995 to include charges that Amtrak had retaliated against him by: 1) investigating his involvement with the misuse of a company cellular telephone and the theft of fifteen Publix gift certificates; 2) changing the job description of Sullivan's job as Yard Chief and then eventually eliminating the position, and; 3) after eliminating the position, failing to hire him for any of the other management positions for which he applied.

The jury found against Sullivan on his claims of sexual harassment and Sullivan has not appealed from the judgment on that claim. However, the jury found for Sullivan on his claims of retaliation, awarding him $50,000 in compensatory damages. Following the trial, the magistrate judge held an evidentiary hearing and awarded Sullivan equitable damages in the amount of $98,783 in backpay, with pre-judgment and post-judgment interest calculated at 6.5%, and front pay in the amount of $458,166.

On appeal, Amtrak argues that the district court erred by not granting Amtrak judgment as a matter of law or, alternatively, a new trial because: 1) the jury found against Sullivan on his sexual harassment claim and therefore could not reasonably find for Sullivan on his retaliation claim; and

2) there was no evidence of retaliation. Amtrak additionally claims that the damage amounts awarded by both the jury and the magistrate judge were not supported by the evidence.

Discussion

We first address Amtrak's claim that, as a matter of law, the jury could not find against Sullivan on his sexual harassment claim while finding for him on the retaliation claim.[1] Amtrak argues that Sullivan's harassment claim is based on a single incident which Amtrak maintains never occurred. Because the jury found for Amtrak on the sexual harassment claim, Amtrak asserts, the jury must have accepted Amtrak's contention that the incident never happened. Consequently, Amtrak argues, Sullivan's claim of retaliation cannot stand because it requires a good faith, objectively reasonable belief that the discrimination occurred. *See Harper v. Blockbuster Entertainment Corp.*, 139 F.3d 1385, 1388 (11th Cir. 1998).

We find this argument totally meritless. The fact that the jury concluded that Sullivan's claim did not meet all the elements for a successful sexual harassment action does not mean that it could not have found that the incident did take place and that Sullivan could have reasonably believed himself the victim of sexual harassment. For example, the jury could well have determined that the incident occurred but did not rise to the level of harassment prohibited by Title

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1. We review the district court's denial of Amtrak's motion for judgment as a matter of law *de novo*. *See Daniel v. City of Tampa, Fla.*, 38 F.3d 546, 549 (11th Cir. 1994).

VII. Courts may not reach behind jury verdicts to evaluate their reasoning. *See, e.g., U.S. v. Russo*, 796 F.2d 1443, 1450 (11th Cir. 1986) (court will not look behind verdict for evidence of jury confusion); *Delpit v. Nocuba Shipping Co.*, 302 F.2d 835, 838 (5th Cir. 1962) ("We may not second-guess jurors or substitute our judgment for theirs when theirs is supported by sufficient evidence."); *Vera-Lozano v. International Broadcasting*, 50 F.3d 67, 71 (1st Cir. 1995) (court will not supplant the jury verdict nor second-guess what may have been their thought process). Moreover, retaliation is a separate offense under Title VII; an employee need not prove the underlying claim of discrimination for the retaliation claim to succeed. *Meeks v. Computer Associates Int'l*, 15 F.3d 1013, 1021 (11th Cir. 1994); *Tipton v. Canadian Imperial Bank of Commerce*, 872 F.2d 1491, 1494 (11th Cir. 1989).

Turning to the question of whether there is sufficient evidence to support Sullivan's claim of retaliation, however, we find Amtrak's appeal meritorious. To make a prima facie case for retaliation, the plaintiff must show: 1) a statutorily protected expression; 2) an adverse employment action; 3) a causal link between the protected expression and the adverse action. *See Olmsted v. Taco Bell Corp.*, 141 F.3d 1457, 1460 (11th Cir. 1998); *Raney v. Vinson Guard Service*, 120 F.3d 1192, 1196 (11th Cir. 1997).[2] Once theplaintiff makes out a prima facie case, "the burden shifts to the defendant to rebut the presumption of retaliation by producing legitimate

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2. The district court instructed the jury to apply this test for both Sullivan's state and federal retaliation claims. Neither party has disputed that instruction. Consequently, we follow the same procedure.

reasons for the adverse employment action." *Raney*, 120 F.3d at 1196 (quoting *Hairston v. Gainesville Sun Publishing Co.* 9 F.3d 913, 919 (11th Cir. 1993)). If the defendant offers legitimate reasons, the presumption of retaliation disappears. *Id.* The plaintiff must then show that the employer's proffered reasons for taking the adverse action were actually a pretext for prohibited retaliatory conduct. *Olmsted*, 141 F.3d at 1460.

There is no dispute that Sullivan's complaint to Amtrak's management that he had been sexually harassed constituted protected expression nor that Sullivan suffered adverse employment actions. The only issue to be addressed here is whether a causal link existed between the adverse employment action and the protected expression.

While Sullivan initially included in his complaint as adverse employment actions his first demotion and the investigation into the gift certificates and cellular phone, he concedes that these cannot be considered retaliatory actions because they predate the protected expression. Thus, the only question before us is whether a causal link exists between Sullivan's sexual harassment complaint and the change in his work hours, the subsequent elimination of his job, and Amtrak's failure to rehire him.

Although Sullivan argues that the change in his work hours as Yard Chief and the subsequent elimination of the position were retaliatory actions taken directly by Scott, he offers no evidence to refute Amtrak's contentions that the change in hours was a response to an FDA requirement and that the job's subsequent elimination (along with all other Yard Chief positions) was part of a nationwide restructuring.

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Absent evidence suggesting that Amtrak's reasons for changing the Yard Chief's hours and then eliminating the position were pretextual, Sullivan's retaliation claim arising from this action must fail.

Sullivan next claims that Amtrak failed to rehire him to a management position for retaliatory reasons. He argues that he was more qualified than the successful applicants for all of the management positions for which he applied, and that in each case he was denied the position by someone who had some tie to Scott or who knew of his sexual harassment complaint. In each case, however, there is insufficient evidence to support a conclusion that Sullivan was not hired for retaliatory reasons.

First, according to Sullivan, he should have received the position of Director of OBS Station Support because the job's responsibilities were similar to those he had been performing for the past twenty years. Sullivan claims that Jon Tainow, who did the hiring for the position, told him that as far as he was concerned, Sullivan had the job but that Ken Bagley, Deputy Chief Executive Officer for the Northeast Corridor and a friend of Scott's, told Tainow to "take a good look" at another candidate, Mark Rose. Rose eventually got the position. Tainow, however, testified that he never told Sullivan that Sullivan had the job and that he hired Mark Rose as Director of Operations because of his administrative background and budget experience. Tainow further stated that the only role Bagley played in the hiring process was that Tainow and Bagley reviewed the list of candidates prior to Tainow's informing Bagley that he was going to hire Mark Rose. More importantly, Tainow testified that he only learned

of Sullivan's harassment complaint a week before the trial. Sullivan presented no evidence to rebut the testimony that the decisionmaker in this case was not aware of his complaint or to show that the reasons Sullivan was not hired were false.

Second, Sullivan claims he should have received the Product Line Director position because it also encompassed duties he had been performing for many years. Moreover, Dennis Hale, the successful candidate, had a marketing background which Sullivan maintains did not prepare him for the on-board services component of the job. Sullivan further claims that the decision about whom to interview was made "in conjunction" with John Stafford, Amtrak's Director of Human Resources, who knew of Sullivan's sexual harassment complaint. However, Allan Edelston, who did the hiring for the position, testified that he hired Dennis Hale for the Product Line Director position because of Hale's experience managing the Autotrain, Amtrak's flagship train. Although Stafford participated in the interview process, the decision was made by Edelston and Edelston testified that the first time he heard of Sullivan's sexual harassment complaint was in the Spring of 1996, over a year after he had filled the position. Again, there is no evidence in the record to rebut the testimony that the decisionmaker did not know of Sullivan's complaint or to show that Amtrak's reasons for hiring Hale were pretextual.

Third, Sullivan claims he should have received the Manager of Terminal Services positions, jobs for which he was not interviewed. Scott Weddle, who was hired for the Miami position, had held a lower position than Sullivan's prior to the reorganization. The New Orleans position went

to James Turngren, who had also held a position lower than Sullivan. In each case, Sullivan claims Stafford participated in the hiring process by pointing out what the interviewer should look for when selecting the person for the job. In response, Dennis Hale testified that he hired Scott Weddle for the Miami Service Manager job because of his training background in on-board service and because of his philosophy of integrating employees into the decision-making process, and because Hale considered him the best qualified applicant for the job.[3] He further testified that he only learned of Sullivan's sexual harassment complaint in late 1996. Sullivan presented no evidence to rebut Hale's asserted ignorance of the complaint or to show that the reasons Hale proffered for selecting Weddle over Sullivan were false. And, while Charles Bothwell did not testify directly as to why Turngren got the New Orleans job over Sullivan, he testified in a deposition read at trial that at a General Managers meeting he attended following the reorganization, several people raised questions as to Sullivan's integrity and honesty. Those concerns stemmed from their belief that Sullivan gave false reasons for requesting a transfer to Miami from New York, and from his attempts to get his wife a position in Miami in violation of the company's nepotism policy. John Stafford also testified that at that meeting Scott recommended Sullivan for several open management positions but that questions were raised about Sullivan's performance ratings and about

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3. There is some discrepancy in the record as to who got this position. Hale testified at trial that the position went to Weddle. However, Stafford, in his deposition, states that the job went to J. MacArthur. In either case, Sullivan presented no evidence to show that the hiring decision was made for retaliatory reasons.

his integrity stemming from his attempt to get his wife hired in Miami.[4]

Finally, Sullivan claims that he, rather than John Coffe, should have gotten the Conventional Service Manager position. He argues that Coffe, who was not an Amtrak employee, was selected over him despite Amtrak's policy of hiring and promoting from within, and that Coffe's technical background with commuter railroads did not match Sullivan's qualifications for a position that dealt with food amenities and sleeper cars. According to Sullivan, David Nogar told him after their interview that he was at the head of the list of candidates, but Nogar then checked with some of Sullivan's previous supervisors and removed him from contention for the job. Sullivan also asserts that Nogar "reported to" Bagley and "knew" Scott. He further notes that each of the other district managers who lost their positions during the reorganization were subsequently rehired in management positions. In response, David Nogar testified that he chose Coffe, a man with whom he had worked previously, because of Coffe's customer service sensitivity and mechanical background. He denied checking with any of Sullivan's previous superiors or to knowing any more about his employment history than Sullivan listed on his

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4. Sullivan testified that he was aware that he had angered a number of people in management following his move to Miami. Margaret Leitereg, Amtrak's Human Resources Manager for the New York district until 1995, also testified that Stafford told her in January 1994, a month prior to Sullivan's lodging a complaint, that Sullivan would not wind up with a management position following the reorganization because he had alienated too many people in the years previous.

application. He further stated that he only learned of Sullivan's sexual harassment complaint a week prior to testifying at the trial. Sullivan again failed to rebut Nogar's stated ignorance of the harassment complaint.

When an employer offers legitimate reasons for its actions, as Amtrak did, the presumption of retaliation disappears. The plaintiff then bears the burden of showing that the employer's reasons for not promoting him were pretextual. Sullivan has not borne that burden. He failed to introduce any evidence that would have permitted the jury to legitimately draw the inference that the reasons proffered by Amtrak for Sullivan not getting these jobs were false and that the real reason was retaliation. We recognize that circumstantial evidence can suffice to support inferences that retaliation was the reason for the adverse action. In this case, however, the evidence presented is far too speculative to support the jury's conclusion that Amtrak retaliated against Sullivan by not promoting him to any of the management jobs for which he applied following his demotion.

Accordingly, we **REVERSE** the judgment of the district court and **REMAND** the case for entry of judgment on behalf of Amtrak.[5]

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5. Because we reverse on the retaliation claims, we need not address the issue of whether the damage amount was appropriate.

Appendix A

United States Court of Appeals
For the Eleventh Circuit

No. 98-4080

District Court No. 95-0037-CV

BARRY T. SULLIVAN,

Plaintiff-Appellee,

versus

NATIONAL RAILROAD PASSENGER CORPORATION, a foreign corporation,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida

Before COX and BARKETT, Circuit Judges, and FAY, Senior Circuit Judge.

JUDGMENT

This cause came to be beard on the transcript of the record from the United States District Court for the Southern District of Florida, and was argued by counsel;

UPON CONSIDERATION WHEREOF, it is now hereby ordered and adjudged by this Court that the judgment of the

said District Court in this cause be and the same is hereby REVERSED; and that this cause be and the same is hereby REMANDED to said District Court for entry of judgment on behalf of Amtrak;

It is further ordered that plaintiff-appellee pay to defendant-appellant the costs on appeal, to be taxed by the Clerk of this Court.

Entered: March 26, 1999
For the Court: Thomas K. Kahn, Clerk

By: s/ Matt Davidson
Deputy Clerk

ISSUED AS MANDATE: **JUN 17 1999**

APPENDIX B — ORDER AND FINAL JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA DATED DECEMBER 8, 1997

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 95-00037-CIV-GRAHAM
MAGISTRATE JUDGE GARBER

BARRY T. SULLIVAN,

Plaintiff,

v.

NATIONAL RAILROAD
PASSENGER CORPORATION,

Defendant.

ORDER

Barry T. Sullivan ("Sullivan") brought an action against the National Railroad Passenger Corporation ("Amtrak") for *quid pro quo* sexual harassment and retaliation pursuant to Title VII of the Civil Rights Act of 1964 and the Civil Rights Act of 1991. A jury trial was held on May 27, 1997, and the jury returned a verdict in favor of Amtrak as to the sexual harassment claim. However, the jury found for Sullivan as to the retaliation claim and awarded compensatory damages in the amount of $50,000.

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A jury's determination in a Title VII action is limited to the award of compensatory and, if warranted, punitive damages. 42 U.S.C. § 1981(a)(c). The Civil Rights Act of 1991 conclusively establishes that compensatory damages do not include backpay, interest on backpay, or any other type of relief authorized under § 706(g) of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5(g). *See* 42 U.S.C. § 1981a. Compensatory and punitive damages are in addition to, not in lieu of or duplicative of, equitable remedies allowed under prior law. *Landgraf v. U.S.I. Film Products*, 511 U.S. 244 (1994). Sullivan has requested that this Court award equitable damages in the form of back pay, reinstatement or in lieu thereof, front pay, and injunctive relief. Accordingly, this Court held an equitable damages hearing on September 17, 1997.

FINDINGS

The first issue that must be resolved by this Court is what actions by Amtrak provide the basis for an award of equitable damages. Sullivan maintains that he is entitled to equitable damages from the date that he was demoted from a management position during the reorganization of Amtrak in January of 1994. Amtrak maintains that Sullivan's demotion from the management position cannot possibly serve as the basis for an award of equitable damages because the demotion occurred prior to the lodging of the complaint in February of 1994.

This Court finds that the appropriate starting point for determining what damages Sullivan is entitled to is the date on which he complained to Amtrak officials about Kevin

Scott's alleged sexual proposition. *See Speer v. Rand McNally & Company*, 1996 WL 667810 *8 n.4 (N.D. Ill. 1996) (holding that a plaintiff's refusal of sexual advances, in and of itself, is not the type of protected activity which is properly the source of a Title VII retaliation claim); *Castillo v. Pathmark Stores*, 941 F.Supp. 437 (S.D.N.Y. 1996) (stating that even the broadest interpretation of a retaliation claim cannot encompass instances where the alleged protected activity consists simply of declining a harasser's sexual advances, even if the advances were made by an immediate supervisor); *Cf. Little v. United Technologies*, 103 F.3d 956, 958 (11th Cir. 1997) (holding that the expression of opposition to a single comment by one co-worker to another cannot constitute opposition of an unlawful employment practice). An award of equitable damages cannot be premised on any actions that occurred prior to the date that Sullivan complained to Amtrak, through his attorney, about Kevin Scott's harassing conduct. Any award of equitable damages must be based on actions that Amtrak took against Sullivan after February of 1994.

A review of the record reveals that Amtrak took several retaliatory actions against Sullivan after he lodged his complaint. The record indicates that Amtrak:

(a) changed Sullivan's yard chief position from a four-day a week job to a five-day a week job;

(b) eliminated Sullivan's yard chief position and placed him in a chief of on-board service position that required increased travel time;

(c) investigated Sullivan for alleged misuse of company-owned cellular phone and theft of gift certificates;

(d) failed to promote Sullivan to any one of four management positions that he applied for and was qualified to hold.

The basic purpose of Title VII relief is to "make whole" victims of unlawful employment discrimination. *Darnell v. City of Jasper, Alabama*, 730 F.2d 653, 655 (11th Cir. 1984); *Albermarle Paper Company v. Moody*, 422 U.S. 405, 418 (1975); *Franks v. Bowman Transportation Co.*, 424 U.S. 747, 763 (1976). The issue that arises is whether Sullivan is entitled to an award of equitable damages based on Amtrak's failure to promote him to the management positions that he applied for after lodging his sexual harassment complaint. Amtrak maintains that the mere fact that Sullivan applied for management positions and was denied promotion after lodging his sexual harassment complaint is insufficient grounds upon which to award equitable damages. Amtrak maintains that the individuals who rejected Sullivan for the positions for which he applied had no knowledge of his complaint. This Court finds that the mere fact that the actual decision makers may not have had knowledge of Sullivan's complaint does not preclude the award of equitable damages. Sullivan's complaint was common knowledge amongst Amtrak management, and individuals who rejected Sullivan's application for promotion were part of management. Additionally, Sullivan's employment history also indicates that Amtrak's rejection of his applications for promotion to management were in all likelihood retaliatory

in nature. The evidence presented during the jury trial indicates that Sullivan was employed by Amtrak at the management level since 1974. He was a competent employee who received both average and above-average performance evaluations. Sullivan was promoted several times throughout his career and was only demoted once at his own request. The evidence further showed that Sullivan was qualified for the management positions that he applied for after complaining about Keith Scott's sexual proposition. In light of the foregoing facts it is evident that but for Sullivan's complaint of sexual harassment, he would have been selected for one of the four management positions for which he applied. Therefore, this Court concludes that Amtrak's failure to promote Sullivan to any of the positions he applied for after lodging his complaint, provides a sufficient basis for the award of equitable damages.

Sullivan has requested that this Court reinstate him to a management position at Amtrak. This Court finds, however, that reinstatement is not appropriate in this case. Amtrak management's prior conduct leads this Court to believe that if Sullivan were returned to a management position he would be subject to a hostile atmosphere. *See e.g. Fitzgerald v. Sirloins Stockade*, 624 F.2d 945, 957 (10th Cir. 1980) (finding that front pay was an appropriate remedy where as a result of the employer's retaliatory action it was improbable that there could be a warm employer-employee relationship); *James v. Stockham Valves and Fittings Co.*, 559 F.2d 310, 358 (5th Cir. 1977) (holding that in light of the employer's long term resistance to equal employment, an award of front pay may be mandated). Therefore, this Court finds that front pay is warranted in this case.

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Sullivan called Jeffrey Koch, a damage expert, to testify with respect to the damages that he incurred as a result of Amtrak's retaliatory actions. Jeffrey Koch provided the Court with various damage scenarios based upon the management positions that Sullivan had applied for but had been unable to obtain. Amtrak cross-examined Mr. Koch with respect to his calculations but did not present any damage testimony of its own. After hearing the testimony and reviewing the exhibits, this Court finds that Mr. Koch's calculations are, for the most part, accurate and reasonable. The only troublesome aspect of Mr. Koch's analyses is that he utilized age 80 as Sullivan's estimated time of death instead of the national average listed in the I.R.S. life expectancy tables of 75.5. *See* Equitable Damages Trial Transcript at p. 46. Therefore, this Court recalculated the damage estimates utilizing 75 as the anticipated age of death.

Mr. Koch submitted estimated lost back and future pay with respect to the four management positions that Sullivan applied for. Koch provided four different calculations for each position based on potential salary ranges. As indicated *supra*, Sullivan received average and above average performance reviews and was in general a competent employee. Accordingly, this Court finds that the appropriate salary range upon which to base Sullivan's award of back and front pay is "average." Additionally, this Court finds that Sullivan's equitable damages award should be based upon the first management job that he applied for. The evidence submitted indicates that he was qualified for that job. That fact in conjunction with the jury's finding of retaliation leads this Court to believe that but for Sullivan's complaint he would have, in all likelihood, been promoted to that position.

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Based upon the foregoing, it is hereby

ORDERED that Barry T. Sullivan shall be awarded backpay in the amount of $ 96,783.00 with prejudgment and post-judgment interest calculated by 6.5%, and front pay in the amount of $458,166.00. Amtrak shall also be enjoined from engaging in any future retaliatory action against Sullivan. Said award and other relief shall be set forth in a separate Final Judgment.

DONE AND ORDERED in Chambers at Miami, Florida this 8th day of December, 1997.

s/ Barry L. Garber
BARRY L. GARBER
UNITED STATES MAGISTRATE JUDGE

Appendix B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 95-00037-CV-GRAHAM
MAGISTRATE JUDGE GARBER

BARRY T. SULLIVAN,

Plaintiff,

v.

NATIONAL RAILROAD
PASSENGER CORPORATION,

Defendant.

FINAL JUDGMENT

THIS CAUSE was before this Court for trial by jury on May 27, 1997, by Order of Reference and consent of the parties pursuant to 28 U.S.C. § 636(c) and Rule 73 of the Federal Rules of Civil Procedure. The jury rendered a verdict in favor of Plaintiff Barry T. Sullivan on the retaliation count, and in favor of Defendant National Railroad Passenger Corporation as to the *quid pro quo* sexual harassment count. This Court also held a hearing on equitable damages on September 17, 1997. The issues having been duly heard, this Court hereby enters Final Judgment in favor of Plaintiff Barry T. Sullivan and against Defendant National Railroad Passenger Corporation.

Accordingly, it is hereby ORDERED and ADJUDGED as follows:

1. Judgment is hereby entered for Plaintiff Barry T. Sullivan in the amount of $50,000 in compensatory damages;

2. Plaintiff Barry T. Sullivan is awarded judgment against Defendant National Railroad Passenger Corporation for backpay in the amount of $96,783.00 together with prejudgment and post-judgment interest calculated at 6.5%, and front pay in the amount of $458,166.00;

3. The National Railroad Passenger Corporation is enjoined from engaging in any future retaliatory action against Barry T. Sullivan; and

4. This Court retains jurisdiction for any award of attorney's fees, and taxation of costs and expenses recoverable as a matter of law.

DONE AND ORDERED in Chambers at Miami, Florida this 8th day of December, 1997.

s/ Barry L. Garber
BARRY L. GARBER
UNITED STATES MAGISTRATE JUDGE

APPENDIX C — VERDICT FORM DATED JUNE 3, 1997 AND FILED JUNE 16, 1997

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 95-00037-CIV-GRAHAM
Magistrate Judge GARBER

BARRY T. SULLIVAN,

Plaintiff

v.

NATIONAL RAILROAD
PASSENGER CORPORATION,

Defendant.

VERDICT FORM

1. Do you find that Amtrak engaged in quid pro quo sexual harassment again Sullivan because Mr. Sullivan rejected the alleged sexual proposition of Kevin Scott?

Yes ___

No X

If you answered "Yes" to QUESTION 1, then your verdict is for Barry Sullivan on his claim for sexual harassment and regardless of how you answer the remaining QUESTIONS, you must answer Questions 3 and 4 as to damages.

In either case, you should now answer Question 2.

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2. Do you find that Amtrak retaliated against Barry Sullivan because he made a legitimate, good faith complaint that Kevin Scott had sexually propositioned him and that his rejection of Mr. Scott's proposition resulted in loss of his management position and future advancement opportunities?

Yes X

No ___

If you answered "Yes" to Question 2, then your verdict for Barry Sullivan on his retaliation claims under Federal and State law and you should answer Question 3 and 4 as to damages.

3. Total amount compensatory damages to Barry Sullivan $50,000.00.

4. Total amount of punitive damages to Barry Sullivan is $ – 0 –.

SO SAY WE ALL THIS 3 DAY OF JUNE, 1997.

s/ [illegible]
JURY FOREPERSON

APPENDIX D — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT DENYING PETITION FOR REHEARING DATED AND FILED JUNE 3, 1999

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 98-4080

BARRY T. SULLIVAN,

Plaintiff-Appellee,

versus

NATIONAL RAILROAD PASSENGER CORPORATION, a foreign Corporation,

Defendant-Appellant.

On Appeal from the United States District Court for the Southern District of Florida

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC
(Opinion _____, 11th Cir., 19__, __ F.2d __).

Before: COX and BARKETT, Circuit Judges, and FAY, Senior Circuit Judge.

Appendix D

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

s/ [illegible]
UNITED STATES CIRCUIT JUDGE